

Exhibit E

polito trial transcript 11-21-03

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2 STATE OF NEW YORK :

3 COUNTY OF MONROE : SUPREME COURT

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5 CONSTANCE F. POLITO, Individually and :

6 AS EXECUTRIX for THE ESTATE OF :

7 SALVATORE T. POLITO, : Index No.

8 Plaintiff, : I-2001-008216

9

10 -versus-

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12 DAIMLERCHRYSLER CORPORATION, :

13 FORD MOTOR COMPANY, :

14 GENERAL MOTORS CORPORATION, et al., :

15 Defendants. :

16

-----X Jury Trial

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Hall of Justice  
Rochester, New York 14614  
November 21, 2003

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20 B e f o r e : THE HONORABLE RAYMOND E. CORNELIUS  
21 Presiding Justice

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25 R e p o r t e d B y : JUDY A. GING, RDR, CSR, CRR  
Official Court Reporter

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2 A p p e a r a n c e s :

3 O N B E H A L F O F T H E P L A I N T I F F :

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5

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AND: DOUGLAS D. VON OISTE, ESQ.

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10 O N B E H A L F O F T H E D E F E N D A N T S D A I M L E R C H R Y S L E R , F O R D A N D G E N E R A L  
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1 DR. CASTLEMAN - DX BY MR. LONG 511  
2 (Jury present at 9:40 a.m.)  
3 THE COURT: Good morning, Members of the Jury.  
4 MR. LONG: May I, your Honor?  
5 THE COURT: Yes, please.  
6 MR. LONG: Plaintiffs call Dr. Barry Castleman.  
7 BARRY CASTLEMAN, called herein as a witness,  
8 first being duly sworn, testified as follows:  
9 MR. LONG: May I your Honor?  
10 THE COURT: Yes.  
11 DIRECT EXAMINATION  
12 BY MR. LONG:  
13 Q. Good morning, Dr. Castleman, how are you?  
14 A. Good morning.  
15 Q. Dr. Castleman, I'm going to start out by helping my  
16 adversaries here, and I'm going to ask you to tell the jury  
17 what year I were born.  
18 A. I was born in 1946. It's based on hearsay.  
19 Q. That makes you 57 years old?  
20 A. Yes.  
21 Q. What's your profession, Dr. Castleman?  
22 A. I'm an environmental consultant. My field is toxic  
23 substances control.  
24 Q. Are you a medical doctor?  
25 A. No, my field is public health.

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1 DR. CASTLEMAN - DX BY MR. LONG 512

2 Q. Can you explain just very briefly for the jury the  
3 difference and relationship between public health and medicine.

4 A. Sure, I went to Johns Hopkins School of Public Health.  
5 Johns Hopkins also has a medical school. The difference is in  
6 public health, the patient is the population, and there's much  
7 more of a focus on preventing disease than just managing and  
8 trying to cure people who are already sick. So my field  
9 within -- within public health is occupational and  
10 environmental health. There are other areas like maternal and  
11 child health care, for example, and many others within the  
12 field of public health.

13 Q. How long have you worked in the field of occupational  
14 and environmental health?

15 A. Since 1972.

16 Q. Can you tell us, please -- I'm going to come to the  
17 asbestos litigation in a minute -- other than the asbestos  
18 litigation, what kind of things you do in your field and where  
19 you do them.

20 A. You mean today?

21 Q. Presently, yes.

22 A. I do a lot of international work with people around  
23 the world, people who are trying to get asbestos banned in  
24 other countries. There are over 30 countries that have banned  
25 asbestos. I have worked with other kinds of organizations,

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1 DR. CASTLEMAN - DX BY MR. LONG 513

2 including governmental agencies. I was at a conference in  
3 Vietnam last week, and as a speaker there, I discussed the  
4 questions I thought that a developing country should be asking  
5 foreign investors before they allow them to construct new  
6 chemical plants in their countries.

7 Q. When you travel to these countries, are you there by  
8 invitation, or are you compensated? Exactly what's the  
9 arrangement?

10 A. Usually I'm there by invitation, and I'm not  
11 compensated. I go at my own expense.

12 Q. Okay. Now, you are compensated for your work in  
13 testifying in asbestos cases; is that correct?

14 A. Yes.

15 Q. Such as this one?

16 A. Right.

17 Q. And what percentage of your gross income do your fees  
18 generated by your acting as an expert witness in asbestos cases  
19 make up?

20 A. It is over ninety percent of my work — most of my  
21 time is spent on things that pay very little or not.

22 Q. And how frequently do you testify on a weekly or  
23 monthly basis?

24 A. On average, about one trial a month, and then there  
25 are occasional depositions in addition to that.

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1 DR. CASTLEMAN - DX BY MR. LONG 514

2 Q. And is the bulk of your work done at the request of  
3 people who represent plaintiffs like me?

4 A. The trial testimony, the depositions are usually taken  
5 at the request of defendants.

6 Q. Okay. Have you ever been asked to consult -- to act  
7 as a consultant with a defense law firm in the asbestos  
8 litigation?

9 A. Yes.

10 Q. How often does that happen?

11 A. Not very often, but I have occasionally been asked to  
12 testify in various circumstances where the parties asking for  
13 my testimony were defendants, including the United States  
14 Government in one case.

15 Q. Do you submit a bill that's based on an hourly rate?

16 A. Yes.

17 Q. What's your hourly rate?

18 A. Three hundred dollars.

19 Q. Doctor, where did you do your undergraduate work?

20 A. At the Johns Hopkins University.

21 Q. And in what field is your undergraduate degree?

22 A. Chemical engineering.

23 Q. Did you then go on and get a master's?

24 A. Yes.

25 Q. In what field?

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1 DR. CASTLEMAN - DX BY MR. LONG 515

2 A. Environmental engineering, air pollution control.

3 Q. And from what institution were you issued your  
4 diploma, your masters?

5 A. That was also Johns Hopkins University in Baltimore.

6 Q. Did you have to write a thesis to get your masters?

7 A. Yes.

8 Q. What was it called?

9 A. It was called, "Asbestos, Effects on Health," and it  
10 was written in 1970 and 1971 about what was known at that time  
11 about the hazards of asbestos.

12 Q. From there, Doctor, did you go on to receive your  
13 doctorate?

14 A. Yes.

15 Q. Where?

16 A. Ten years after I had been out of school, I went back  
17 to Johns Hopkins at the School of Public Health in 1981, and I  
18 received my doctorate in 1985.

19 Q. Did you write a thesis in order to get your doctorate?

20 A. Yes.

21 Q. What was the title of your thesis?

22 A. "Asbestos, a Historical Case Study of Corporate  
23 Response to an Industrial Health Hazard."

24 Q. Doctor, some of the jurors may know what the procedure  
25 is to obtain a doctorate and to prepare a thesis and submit it



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1 DR. CASTLEMAN - OK BY MR. LONG 516  
2 for critical review, but would you just tell us, generally,  
3 what the procedure is and the process that you go through.  
4 A. Well, the student comes up with an idea which he or  
5 she is proposing to do the doctoral thesis on and writes up a  
6 written proposal. This goes before a faculty committee at the  
7 university, and then the faculty committee meets with the  
8 student and works out just what the -- what the idea is going  
9 to be. What is the student going to do in writing his thesis?  
10 What is the focus on it -- of it going to be and so on. And  
11 after getting the approval to proceed, the student can then go  
12 ahead and do the research, write the thesis, and usually, as in  
13 my case, three years or so later, come back with a thesis,  
14 present it to the faculty committee, whereupon the faculty  
15 committee reads the thesis and then has an occasion to question  
16 the student about it, and this is called oral defense of a  
17 thesis.

18 And then the faculty committee has the option of telling  
19 the student that the thesis is accepted as is, or it needs more  
20 work, change this and that, or rejecting it.

21 Q. And what happened in your case?

22 A. In my case, it was accepted as submitted.

23 Q. Now, how did you go about doing the research for your  
24 thesis?

25 A. I investigated every source I could think of for

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1 DR. CASTLEMAN - DX BY MR. LONG S17  
2 information that was both published and unpublished about the  
3 history of asbestos as a public health program and a history of  
4 corporate response as more became known about the hazards of  
5 asbestos.

6 Q. Do you have any idea how many articles or published  
7 items and unpublished items you reviewed in formulating your  
8 thesis?

9 A. No, of course I didn't keep counts, but there were  
10 thousands of things like this, of this kind that I looked at.  
11 There were publications in medical journals, medical textbooks,  
12 medical abstracting publications, engineering journals,  
13 business trade magazines, insurance industry publications,  
14 popular magazines, newspapers, the legal literature of law  
15 cases. Those are just the published sources. Then there were  
16 archives of scientists, archives of institutions, U. S.  
17 government archives. There were workers' compensation records  
18 in the states across the United States where claims had been  
19 filed involving workers claiming they had asbestosis or cancer  
20 from asbestos.

21 These are the kinds of things -- and then there were  
22 internal corporate documents that also surfaced at a certain  
23 point, because I was involved with attorneys such as you, and  
24 lawyers have, in litigation, access through legal discovery to

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25 things that are not in the public domain. And so defendant

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1 DR. CASTLEMAN - DX BY MR. LONG 518

2 corporations were prevailed upon to produce documents from  
3 their files about their internal knowledge about hazards of  
4 asbestos, historically, medical records, examinations,  
5 industrial hygiene reports, various types of memos regarding  
6 such subjects as warning labels on their products, and internal  
7 trade association minutes, as well.

8 Many of the companies were members of trade associations,  
9 where they would get together sometimes talking about asbestos  
10 hazards and how to deal with that. So these are the kinds of  
11 documents that I had access to in writing the thesis.

12 MR. THACKSTON: Your Honor, I object to the  
13 responsiveness of the answer.

14 THE COURT: overruled.

15 Q. Incidentally, Dr. Castleman, have you ever testified,  
16 either at a deposition or in court, at my request previously?

17 A. Yes, in deposition.

18 Q. Okay. How many times?

19 A. I don't know, a few.

20 Q. And how about the other members of my law firm, have  
21 you been asked by other members of my law firm to testify  
22 before?

23 A. Yes, a few times.

24 Q. Okay. Now, Doctor, what was going on between 1972

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25 when you got -- is that when you got your master's?

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1 DR. CASTLEMAN - DX BY MR. LONG 519

2 A. The degree was formally awarded in 1972.

3 Q. And then you got the doctorate in 1981?

4 A. '85.

5 Q. You went back in '81 to start the doctorate?

6 A. Right.

7 Q. What was happening in those intervening years for you  
8 professionally?

9 MR. THACKSTON: Your Honor, may we approach? I  
10 object, and I'd like to approach.

11 (Discussion held off the record at the side bar.)

12 MR. THACKSTON: Your Honor, I object to the form  
13 of the question.

14 THE COURT: Sustain.

15 Q. Doctor, could you tell the members of the jury what  
16 types of activities you were engaging in professionally between  
17 1972 when you got your master's and 1981 when you returned to  
18 Johns Hopkins for your -- to begin your doctorate?

19 MR. THACKSTON: Object to the form.

20 THE COURT: Overruled.

21 A. Well, my first employment was as a public health  
22 official. I worked as -- in the division of industrial hygiene  
23 and air pollution for Baldwin County Health Department for

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24 about a year and a half, during which time I was involved in  
25 enforcing state regulations having to do with industrial air

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1 DR. CASTLEMAN - DX BY MR. LONG 520

2 pollution. And I did special project investigations for the  
3 head of the health department on toxic substances, and I also  
4 initiated a number of activities having to do with asbestos,  
5 providing warnings to breweries to stop using asbestos filters.

6 THE COURT: I think that goes beyond the  
7 question.

8 Q. All right.

9 THE COURT: You simply asked him to outline his  
10 activities during the ten or fifteen --

11 MR. LONG: Fine, I will move to another  
12 question.

13 Q. What's the black book on the ledge in front of you?

14 A. That's a book I wrote. It's called Asbestos, Medical  
15 and Legal Aspects. It is in its fourth edition. It was  
16 originally published in 1984. This edition was published in  
17 1996, and it is about the public health history of asbestos.

18 Q. Could you just hold it up so the jury can see what it  
19 looks like.

20 A. (Indicating.)

21 Q. How many editions have there been?

22 A. This is the fourth edition.

23 Q. Have there been additions that you made to the book

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24 between editions of the book?

25 A. Sure, basically the subsequent editions after it was

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1 DR. CASTLEMAN - DX BY MR. LONG 521

2 first published have been expansions along the original  
3 framework of the book. Once I had a structure from the first  
4 edition, I just added to it as more information came to light,  
5 so the structure of the book is essentially the same, and the  
6 material just accumulated. I think I added about three hundred  
7 pages since the first edition.

8 Q. Okay. Now, in addition to your consulting work for  
9 attorneys, have you ever done any consulting work at the  
10 request of the United States Government?

11 A. Yes.

12 Q. Can you tell us what agencies or branches of the  
13 government you have consulted with?

14 A. Yes, I have been a consultant to the U. S.  
15 Environmental Protection Agency, the Occupational Safety and  
16 Health Administration, Federal Trade Commission, Consumer  
17 Products Safety Commission, U. S. Department of Justice and the  
18 Congress's Office of Technology Assessment.

19 Q. How about the state level, have you acted as a  
20 consultant at the state level at all?

21 A. I have been a consultant for the State of Maryland  
22 Attorney General's Office, in connection with asbestos

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23 litigation, asbestos in state buildings.  
24 Q. Doctor, have you testified before Congress?  
25 A. Yes.

1 DR. CASTLEMAN - DX BY MR. LONG 522  
2 Q. How frequently have you done that?  
3 A. Maybe half a dozen times, written statements and  
4 oral -- and oral testimony before congressional committees of  
5 the Senate and House.  
6 Q. In addition to your theses and your book, have you  
7 published other articles that address the issue of asbestos  
8 generally?  
9 A. Yes.  
10 Q. Could you give us a flavor for what you have done.  
11 A. Well, I have investigated certainly the history of the  
12 asbestos problem. I have investigated the global scope of the  
13 asbestos program and written a lot of articles about -- along  
14 the lines of the export of hazardous industries to developing  
15 countries. I have talked about the regulation of asbestos.  
16 I've been involved --  
17 MR. THACKSTON: Your Honor, excuse me, I object.  
18 This is beyond the scope of the qualifications.  
19 THE COURT: I will sustain the objection. I  
20 don't understand the question, flavor -- I don't know  
21 what you meant by that.  
22 MR. THACKSTON: Your Honor, so you understand

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23 the basis of my objection, he's here to talk about  
24 1940 --

25 MR. LONG: Judge, could we not have speeches in

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1 DR. CASTLEMAN - DX BY MR. LONG 523  
2 front of the jury?

3 THE COURT: I understand that, Mr. Thackston.  
4 The form of the question is poor, and so when you  
5 object on the grounds it is non-responsive, it is  
6 difficult to make that determination because of the  
7 manner in which the question was asked. Why don't  
8 you ask another question.

9 Q. What topics involving asbestos, generally, in addition  
10 to what you have already told us about -- I don't want you to  
11 go back to the beginning -- have you written on with respect to  
12 asbestos?

13 MR. THACKSTON: Objection.

14 A. I have also --

15 THE COURT: Grounds.

16 MR. THACKSTON: Relevance to the testimonies  
17 here and calls for a narrative.

18 THE COURT: Overruled.

19 Q. Doctor.

20 A. I have also written about my own attempts to warn  
21 brake mechanics in the early --



22 politico trial transcript 11-21-03  
MR. THACKSTON: Objection.

23 THE COURT: Sustained. There's a difference  
24 between testifying about the substance. You're  
25 asking him generally his activities and his writings.

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1 DR. CASTLEMAN - DX BY MR. LONG 524  
2 MR. LONG: I'm trying not to lead. Let me do it  
3 this way.

4 THE COURT: It's not leading. There's a  
5 difference between testifying as to the substance of  
6 what might be in something he has written about or  
7 done and his professional background.

8 MR. LONG: I understand, your Honor. Let me try  
9 to be more precise with these next couple of  
10 questions.

11 Q. Without getting into any of the details or content of  
12 anything you have written, have you contributed publications to  
13 the world literature regarding asbestos in brake shoes or  
14 automobiles?

15 A. Yes.

16 MR. THACKSTON: Objection.

17 THE COURT: Overruled.

18 Q. Have you written any articles on what's called  
19 threshold limit values?

20 A. Yes.

21 Q. How many?

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22 A. About ten articles on threshold limit values in  
23 medical and scientific journals.  
24 Q. okay. All right, Doctor. Let's get into the  
25 substance of your testimony.

1 DR. CASTLEMAN - DX BY MR. LONG 525

2 MR. THACKSTON: Your Honor --

3 THE COURT: Yes.

4 MR. THACKSTON: May I briefly voir dire this  
5 witness so we can be exactly clear on what he is here  
6 to testify about -- voir dire, I'm sorry.

7 THE COURT: I think we know what he's here to  
8 testify about. Members of the jury, would you step  
9 down for just a few minutes.

10 (Jury excused at 9:55 a.m.)

11 THE COURT: Counsel, I understand the nature of  
12 the defense's position regarding state of the art  
13 1948 before and after. Is that what you're -- I mean  
14 I believe that the witness is here to testify as to  
15 the state of the art, I think.

16 MR. THACKSTON: Your Honor, as I understand it,  
17 counsel and I have the agreement, and that's the only  
18 agreement we could have --

19 THE COURT: I was about to ask you, there were a  
20 number of motions in limine before the trial, and

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21 looking at my outline, I had reserved on three in the  
22 written decision. There was an agreement on I  
23 believe someone withdrawing or reserving until the  
24 time of trial, but there were a number in which there  
25 were consent orders and orders that had to be

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1 DR. CASTLEMAN - DX BY MR. LONG 526  
2 submitted. I don't think any orders have been  
3 submitted to me for signature, but there were a  
4 number of --

5 MR. FLYNN: Yes, they were submitted for your  
6 signature, Judge.

7 THE COURT: They were.  
8 (Discussion held off the record.)

9 THE COURT: One of them I think pertains to this  
10 issue.

11 MR. LONG: Judge, I have told Mr. Thackston, and  
12 I told the jury that I have no intention of going any  
13 further than 1948, and that's what I have told Dr.  
14 Castleman, and he understands that. I honestly do  
15 not understand what this controversy is about.

16 MR. THACKSTON: Your Honor, my concern is the  
17 witness's non-responses, what he is trying to do,  
18 which is to say I tried to warn mechanics in the  
19 1970s about the dangers of asbestos. We are not here  
20 to talk about the 1970s. We are here to talk about

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21 what's in the published literature before 1948.

22 THE COURT: I understand.

23 MR. THACKSTON: He's not qualified -- that's not

24 the proper subject of expert testimony to say what

25 companies were thinking based on a document here and

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1 DR. CASTLEMAN - DX BY MR. LONG 527

2 there.

3 THE COURT: I think to the extent that he  
4 testified about that and you objected, I sustained  
5 the objection. I think up to this point, he simply  
6 listed his qualifications and what he's done in the  
7 realm of public health.

8 MR. THACKSTON: Well, your Honor, the  
9 interpretation of the documents is what I have a  
10 concern about and what I was asking to voir dire the  
11 witness on. He's not a industrial hygienist. He's  
12 not a doctor. He's read articles. He can see in  
13 1930 Merewether published something. In 1938 Dresser  
14 published something. In 1946 fleischer-drinker  
15 published something. If he starts saying what that  
16 meant, it meant this or that, he's not qualified to  
17 do that. He is not an industrial hygienist.

18 If he says, "Here's what was said," and puts it  
19 on the screen, that's fine, but when he starts saying

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20 My interpretation -- this means the company should  
21 have known this based on that," that's not the proper  
22 subject for the expert.

23 THE COURT: Mr. Thackston, I don't know what  
24 he's going to say.

25 MR. THACKSTON: Well, I do.

1 DR. CASTLEMAN - DX BY MR. LONG 528

2 THE COURT: And I don't understand why that is  
3 subject to a voir dire at this point.

4 MR. THACKSTON: Okay, that --

5 THE COURT: If you want to object --

6 MR. THACKSTON: And maybe I'm doing it the wrong  
7 way --

8 THE COURT: And if you want to raise the issue  
9 and talk about it outside the presence of the jury at  
10 that time, that's fine, but I don't think necessarily  
11 a voir dire is going to serve that purpose.

12 MR. THACKSTON: This is my clumsy way of trying  
13 to give the Court a head's up that I'm about to be on  
14 my feet a lot.

15 THE COURT: That's fine. That's fine.

16 MR. THACKSTON: Okay, your Honor, that's fine.  
17 The order -- the order that the Court is referencing  
18 is the order that says that post 1948 does not come  
19 in. Maybe the witness should be apprised --

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20 MR. LONG: Judge -- I have apprised my witness.

21 Mr. Thackston.

22 MR. THACKSTON: I'm talking to the Court.

23 MR. LONG: I am talking to you. I have apprised  
24 my witness already.

25 THE COURT: Mr. Long, please.

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1 DR. CASTLEMAN - DX BY MR. LONG 529

2 MR. THACKSTON: I'm addressing the court, and  
3 I'm asking the Court whether the Court would consider  
4 apprising the witness of the Court's prior order in  
5 the case.

6 THE COURT: Mr. Long has represented, as an  
7 officer of the court, that he has done so.

8 MR. THACKSTON: I wasn't aware of that.

9 MR. LONG: You are aware of that, Mr. Thackston.  
10 I just said that five minutes ago.

11 THE COURT: Mr. Long, please, address your  
12 comments to me.

13 MR. LONG: I'm sorry, your Honor. I would also  
14 like --

15 THE COURT: Let me see the order first.

16 MR. LONG: Also, on this issue of Dr. Castleman  
17 volunteering information, the reason I did not ask  
18 him have you published on brakes is because I was

polito trial transcript 11-21-03  
19 afraid the defendants would object I was leading. So  
20 I tried to ask an open-ended question, and it was  
21 stricken. But he's not going to make speeches.  
22 There's no evil intent here, your Honor, with this  
23 witness.

24 MR. THACKSTON: Your Honor, I'm not criticizing  
25 Mr. Long, and I'm not criticizing the witness. We

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1 DR. CASTLEMAN - DX BY MR. LONG 530  
2 just have orders that have been entered in this case.

3 THE COURT: I understand.  
4 (Jury present 10:12 a.m.)

5 JUROR: Could we ask the witness to speak up a  
6 little. It is very difficult to understand him.

7 MR. LONG: The jury has asked that Dr. Castleman  
8 speak up.

9 THE COURT: The court reporter also had the same  
10 request. If we have a problem, we can obtain the  
11 mike, the microphone.

12 MR. LONG: May we suggest to any of the jurors,  
13 your Honor, if his voice drops, they raise their  
14 hand --

15 THE COURT: Same thing with defense counsel.

16 MR. LONG: May I, your Honor?

17 THE COURT: Yes.

18 Q. Doctor, in connection with your theses, the

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19 preparation of your theses and the writing of your book, you  
20 did research into the history of the relationship between  
21 asbestos and disease; is that correct?

22 A. Right.

23 Q. What were the earliest published articles that you  
24 found in doing your research?

25 A. They were just before the turn of the last century.

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1 DR. CASTLEMAN - DX BY MR. LONG 531

2 They were medical report -- or the -- government reports of the  
3 British government, annual reports of the chief inspector of  
4 factories and workshops for the years 1898 and 1899.

5 Q. Who was the chief inspector of factories, not his  
6 name, but what was his role?

7 A. Well, he was -- he ran an agency of the British  
8 government that was initially set up to -- back in the 1830s,  
9 to stop the worst abuses of child labor, and then came to  
10 include such things as protection of workers from occupational  
11 disease hazards.

12 Q. What information in that particular article did you  
13 find helpful with respect to the relationship between asbestos  
14 and disease?

15 MR. THACKSTON: Objection.

16 THE COURT: Sustained.

17 Q. What was the significance of that article, Doctor?



18 politico trial transcript 11-21-03  
MR. THACKSTON: Objection.

19 THE COURT: Sustained.

20 Q. What did that article report on?

21 A. It reported on various hazards that the factory  
22 inspector had investigated, including asbestos.

23 Q. Okay. Was there a particular disease that was being  
24 reported in that publication?

25 A. No, the article talked about lung difficulties that

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1 DR. CASTLEMAN - DX BY MR. LONG 532

2 workers in asbestos factories were suffering from, but there  
3 was no name given to the disease.

4 Q. How did you find that article?

5 A. It was referenced in something else that I read.

6 Q. When you prepared for the publication of your theses  
7 and your book, did you make use of something called the index  
8 medicus?

9 A. Yes.

10 Q. What is the index medicus?

11 A. This has been published since 1879. It is a  
12 continuously published index of articles that appear in medical  
13 journals around the world, and it is indexed by subject and  
14 author. So if you're interested in asbestosis, all you have to  
15 know is how to spell asbestosis to be able to start using the  
16 index medicus and find articles on that.

17 Q. Where do you find the index medicus?

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18 A. In every medical library I have ever walked into.

19 Q. Doctor, can you tell the members of the jury what the  
20 earliest article was that you found during your research which  
21 indicated that there was a relationship between exposure to  
22 asbestos and cancer of any kind?

23 MR. THACKSTON: Objection.

24 THE COURT: Sustained.

25 Q. When you were doing your research, Doctor, did you

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2 find any articles that addressed the issue of the potential for  
3 asbestos to cause cancer?

4 MR. THACKSTON: Objection.

5 THE COURT: Sustained.

6 Q. Doctor, are you familiar with a textbook written by an  
7 individual named Oliver?

8 A. Yes.

9 Q. When was that published?

10 A. Thomas Oliver wrote three books on occupational  
11 diseases in 1902, 1908, and I think 1916.

12 Q. Do you recall what the one in 1902 was called?

13 A. I think it was called diseases of occupation.

14 Q. And did you review that particular publication in  
15 preparation for your writings?

16 A. Yes.

polito trial transcript 11-21-03  
17 Q. What did Oliver report on?  
18 MR. THACKSTON: Objection.  
19 THE COURT: Grounds?  
20 MR. THACKSTON: Beyond the scope of his  
21 expertise.  
22 THE COURT: Overruled on that ground.  
23 MR. THACKSTON: I'm sorry?  
24 THE COURT: Overruled on that ground.  
25 A. Oliver reported that the ancient Romans had recognized

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1 DR. CASTLEMAN - DX BY MR. LONG 534  
2 some of the hazards which were thought to be, by 1902, at  
3 least, among the most serious hazards that workers faced, and  
4 they mentioned mercury poisoning, lead poisoning and asbestos.  
5 Q. Are you familiar with an author named Montague Murray?  
6 A. Yes.  
7 Q. Do you recall -- well, did you read any publications  
8 that were written by Montague Murray?  
9 A. There was one publication in which Dr. Murray was --  
10 there was a transcription of Dr. Murray's testimony before a  
11 committee of parliament in 1906 describing a case of an  
12 individual who died with lung scarring attributed to his  
13 occupation, working in a factory, making asbestos textiles.  
14 MR. THACKSTON: Object to the responsiveness --  
15 I'm sorry, I didn't mean to interrupt. Object to the  
16 responsiveness.

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17 THE COURT: On that specific ground, overruled.

18 Q. Doctor, do you know of any publications written by an  
19 American doctor named Pancoast?

20 A. Yes.

21 Q. Who was he?

22 A. He was a radiologist in Philadelphia, and publications  
23 included 1917 and 1918, 1925 and 1931 articles on  
24 pneumoconioses, lung scarring diseases caused by dusts, and he  
25 wrote about asbestos as one of the dusts causing such diseases

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1 DR. CASTLEMAN - DX BY MR. LONG 535  
2 in all of those publications.

3 Q. Was that the earliest publication that you found in  
4 the American literature with respect to this particular topic?

5 A. The 1917 report would have been the earliest in the  
6 American literature, yes.

7 Q. Are you able to tell the members of the jury whether  
8 the Oliver, Murray and Lady Inspector publications were  
9 available in the United States?

10 MR. THACKSTON: objection.

11 THE COURT: Sustained.

12 Q. Was the Montague Murray publication ever republished  
13 in the United States?

14 A. It was described in the United States in 1918.

15 Q. In what?

polito trial transcript 11-21-03  
16 A. In a publication of the United States Government  
17 published by the U. S. Bureau of Labor Statistics, authored by  
18 Frederick Hoffman, an actuary with the Prudential Insurance  
19 Company, called mortality in dusty trades, and it had a section  
20 on asbestos and a section on the dangers of asbestos.  
21 Q. Okay. Are you familiar with an English physician  
22 named Cooke?  
23 A. Yes.  
24 Q. What contributions, if any, to the literature on this  
25 topic did he make that you reviewed that you found noteworthy

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1 DR. CASTLEMAN - DX BY MR. LONG 536  
2 in preparation for your writings?  
3 MR. THACKSTON: Object to the form.  
4 THE COURT: Sustained as to form.  
5 Q. Who is Dr. Cooke?  
6 A. He was a pathologist in England who published articles  
7 on asbestosis.  
8 Q. What did he -- how many articles did he write that  
9 you're aware of before 1948?  
10 A. I can think of articles in 1924, 1927 and 1931. There  
11 may have been others.  
12 Q. Was there a particular individual who was the subject  
13 of his publications?  
14 A. At least in the first two, yes.  
15 Q. What was his or her name?

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16 A. The name was Nellie Kershaw, a woman who died at the  
17 age of 33.

18 Q. What did Dr. Cooke report with respect to Nellie  
19 Kershaw?

20 MR. THACKSTON: Objection.

21 THE COURT: Sustained.

22 Q. What was the general topic of Dr. Cooke's 1924  
23 publication?

24 MR. THACKSTON: Objection.

25 THE COURT: Grounds?

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2 MR. THACKSTON: Sorry, your Honor?

3 THE COURT: Grounds?

4 MR. THACKSTON: Hearsay, not the proper --

5 THE COURT: Sustained.

6 MR. THACKSTON: It's outside --

7 THE COURT: Sustained.

8 Q. Did you -- did Dr. Cooke publish after 1924?

9 A. Yes.

10 Q. When was the next time?

11 A. He published an article called "Pulmonary Asbestosis"  
12 in 1927.

13 Q. Up until that time, in everything that you have  
14 reviewed, had you seen the term "pulmonary asbestosis" used

15 previously? politico trial transcript 11-21-03

16 A. No, that was the first time that term was used, in the  
17 December issue of the British Medical Journal where Cooke and  
18 two other authors published articles about this disease.

19 Q. Was that Cooke article ever published in the United  
20 States?

21 A. It was referenced one month later in an editorial in  
22 the Journal of the American Medical Association.

23 Q. Okay. Now, in 1927, did Dr. Oliver publish again  
24 anything noteworthy that you took into consideration or that  
25 you included in your publications?

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2 A. Yes.

3 Q. What was the topic of the 1927 publication?

4 A. The clinical appearance of people with this condition,  
5 asbestosis.

6 Q. What do you mean by clinical appearance?

7 MR. THACKSTON: objection.

8 THE COURT: Sustained.

9 Q. Did Dr. Oliver write about something he called a  
10 clinical appearance?

11 A. Yes.

12 MR. THACKSTON: Same objection.

13 THE COURT: I will allow it, overruled.

14 Q. When you were in -- when you were doing your

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15 doctorate, either your work for your masters or work for your  
16 doctorate, did you take any courses which addressed the  
17 clinical diagnosis of disease?

18 A. I took a course on occupational lung diseases at the  
19 Johns Hopkins School of Public Health.

20 Q. And what diseases of the lung were included in your  
21 course on occupational lung diseases?

22 A. Well, it included the pneumoconioses and other  
23 conditions attributed to occupational -- employment.

24 Q. Is asbestosis a pneumoconiosis?

25 A. Yes.

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2 Q. Did your course materials include anything regarding  
3 the clinical appearance of pneumoconiosis, including  
4 asbestosis?

5 MR. THACKSTON: Objection.

6 THE COURT: Sustained.

7 Q. Let's go to 1930. Were there any publications from  
8 1930 that you consider noteworthy on this topic?

9 A. Yes.

10 Q. Which ones?

11 A. There was a publication by a Dr. Herewether and his  
12 colleague Mr. Price. This was a lengthy report published by  
13 the factory inspector in England. It was the first published



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14 survey of workers in the asbestos industry, attempting to see  
15 the prevalence of asbestosis among people employed in the  
16 manufacture of asbestos products. Merewether and Price found  
17 26 percent to have workers that examined asbestosis. Half the  
18 report was dedicated to the engineer Price writing about  
19 control measures that should be used to protect workers against  
20 the inhalation of asbestos dust on the job.

21 Q. Were brakes referred to at all in that publication?

22 A. Yes.

23 Q. In what manner?

24 A. The article described the major industries in which  
25 asbestos was used and recommendations for each about dust

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1 DR. CASTLEMAN - DX BY MR. LONG 540

2 control and worker protection.

3 Q. Okay.

4 A. And brake lining manufacturers was one of those  
5 industries.

6 Q. Did they make recommendations about dust control in  
7 the manufacture of brakes?

8 A. Yes.

9 Q. What did they say?

10 MR. THACKSTON: objection.

11 THE COURT: sustained.

12 Q. When you reviewed the Merewether and Price publication  
13 from 1930, first of all, did you review -- the Merewether and

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14 Price publication become part of either of your two theses or  
15 your book?

16 A. Oh, yes, one of the most widely cited articles in the  
17 literature on asbestos.

18 Q. Why did you choose to include it?

19 A. Because of its -- because of its importance, its  
20 obvious importance.

21 Q. How is it important?

22 A. It was the first survey -- previous to this, there had  
23 been case reports of deaths from asbestosis of individuals, but  
24 there was no -- nothing published about the prevalence of the  
25 disease among people who worked in the asbestos industry who

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1 DR. CASTLEMAN - DX BY MR. LONG 541

2 were still well enough to get up and go to work each day, and  
3 so this was a slowly developing disease.

4 And this was described very well by the statistical  
5 analysis or the statistics presented by Dr. Merewether, showing  
6 the longer the people worked in the industry, the higher their  
7 prevalence of the disease.

8 MR. THACKSTON: Object to the responsiveness.

9 THE COURT: On those grounds, overruled.

10 Q. Did Dr. Merewether address the potential for  
11 preventing this disease from occurring in the work place?

12 A. Yes, he did.

polito trial transcript 11-21-03  
13 Q. In what manner?  
14 MR. THACKSTON: objection.  
15 THE COURT: Sustained.  
16 Q. Did Dr. Merewether and Mr. Price make recommendations  
17 for the control of dust in the asbestos industry?  
18 MR. THACKSTON: objection.  
19 THE COURT: Sustained.  
20 Q. Was there anything else, except -- besides what you  
21 have told us so far, that you observed in reading the  
22 Merewether and Price report, which was germane to the issue of  
23 asbestos and its propensity for causing disease?  
24 MR. THACKSTON: objection.  
25 THE COURT: Sustained.

1 DR. CASTLEMAN - DK BY MR. LONG 542  
2 Q. Did Merewether and/or Price address the issue of  
3 informing the employee or the worker of the dangers of working  
4 with asbestos?  
5 MR. THACKSTON: objection.  
6 THE COURT: Sustained.  
7 Q. Other than what you have told us before -- so far  
8 about Merewether and Price, was there any other information  
9 about that publication that you considered to be important with  
10 respect to the development of literature over the time  
11 regarding the relationship between asbestos and disease?  
12 A. Yes.

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13 MR. THACKSTON: Objection.

14 THE COURT: I will allow that answer to stand.

15 Q. What was it?

16 MR. THACKSTON: Objection.

17 THE COURT: Sustained.

18 Q. In addition to the issues that you already informed us  
19 about in this particular paper, were there other issues  
20 relating to the creation of dust in the asbestos textile plants  
21 that were made by Merewether and Price?

22 MR. THACKSTON: Objection.

23 THE COURT: Grounds?

24 MR. THACKSTON: Calling for interpretation of  
25 the article, beyond the scope of expertise, calls for

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1 DR. CASTLEMAN - DX BY MR. LONG 543

2 narrative, calls for speculation and relevance.

3 THE COURT: All those grounds are overruled.

4 Q. Go ahead, Doctor.

5 A. Well, the report described methods of dust controlling  
6 that could be applied in textile plants, wetting of the  
7 material, use of localized exhaust ventilation to keep the dust  
8 from being blown in the faces of the workers who were standing  
9 over the production equipment, and educating the employees to a  
10 sane appreciation of the risk, as Merewether put it.

11 MR. THACKSTON: Object.

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THE COURT: Sustained.

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MR. THACKSTON: Move to strike.

14

THE COURT: Sustain. I will strike the answer.

15

Q. Doctor, is the answer that you just gave us your

16

interpretation of what Merewether and Price said, or is it what

17

Merewether and Price said in their publication in 1930?

18

MR. THACKSTON: Objection.

19

THE COURT: Sustained.

20

Q. We will come back to Merewether and Price. What's the

21

International Labor Office?

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A. This was set up as part of the League of Nations

23

around 1919, and the International Labor Office is an

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international organization where unions, governments and

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employers are the three tripartite members of the organization

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DR. CASTLEMAN - DX BY MR. LONG

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from each member country, and the International Labor

3

Organization has published materials over the years relating to

4

occupational diseases and their prevention.

5

Q. Do you recall the first time that they published on

6

that particular topic?

7

A. Yes, 1930 they published the first volume of their

8

encyclopedia Occupation and Health. It has a section on

9

asbestos, and this related information about the health effect

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of asbestos and the reluctance of insurance companies to sell

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life insurance to asbestos workers.

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12 MR. THACKSTON: Object to the responsiveness.

13 THE COURT: Grounds.

14 MR. THACKSTON: Went far beyond the scope of the  
15 question. The question was what was their  
16 publication.

17 THE COURT: No, that wasn't the question.

18 MR. THACKSTON: And hearsay.

19 THE COURT: Well, I will strike the last part of  
20 the question concerning the reluctance of insurance  
21 companies. I will strike that part.

22 Q. Was the Merewether-Price article published in the  
23 United States at any time?

24 A. Yes, Merewether published an article, a lengthy two  
25 part article in the Journal of Industrial Hygiene. In the same

1 DR. CASTLEMAN - DX BY MR. LONG 545  
2 year his article -- his report was submitted to the Parliament  
3 through official government channels in England, 1930.

4 Q. The subject of the publication was what?

5 A. Pulmonary asbestosis. It was the survey data and  
6 analysis of his evaluations of asbestosis in several hundred  
7 workers in the asbestos industry.

8 Q. Which asbestos industry?

9 A. The British asbestos industry.

10 Q. Okay. Was it the same data that he had written on in

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11 1930?

12 A. basically the database was the same. The text wasn't  
13 exactly the same, but the underlying material was.

14 Q. And did that publication appear in the United States  
15 in the Journal of Industrial Hygiene?

16 A. Yes.

17 Q. What type of publication is that?

18 A. That's what you might call a specialty journal in  
19 public health or medicine for people who are interested in  
20 occupational health. They consisted -- the first half of each  
21 issue would be articles, and the second half would be abstracts  
22 or summaries of articles that had appeared in other places  
23 around the world.

24 And so the abstracts would be one or two paragraph  
25 summaries of these articles, and between the articles and the

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2 abstracts that appeared in the Journal of Industrial Hygiene,  
3 it was really the best single source of such information  
4 available in the United States, between 1919 and 1949, the  
5 years of its publication.

6 Q. Were there any other publications which appeared in  
7 1931 regarding the relationship between asbestos and disease?

8 MR. THACKSTON: objection.

9 THE COURT: Grounds?

10 MR. THACKSTON: Foundation.

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11 THE COURT: overruled on that ground.

12 A. One comes to mind in the archives of pathology by Dr.  
13 Harold Stewart and his co-workers describing two cases of  
14 asbestosis, one in an individual who only worked nine months in  
15 the asbestos industry, and nine years later was seen at autopsy  
16 with a severe degree of asbestosis.

17 Q. Who was Dr. Ellman?

18 A. Dr. Ellman was another British authority on the  
19 subject of asbestos who published in both British and American  
20 journals in 1933 and in 1944, he described among others --

21 Q. What did he describe?

22 A. An insulation worker who had developed asbestosis, a  
23 user of asbestos products.

24 Q. Anything else?

25 A. Ellman also talked about -- wrote about a dog that had

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2 worked -- that had worked -- a dog had been in an asbestos  
3 factory. They used the dog as a rat catcher, and the dog had  
4 developed such extreme shortness of breath after a time that  
5 the dog was, as the authors put it, lethal in its own  
6 interests. And then the dog was subject to examination, and  
7 asbestosis was identified as the cause of death.

8 Q. Are you familiar with the publication in 1933 by an  
9 American doctor named Donnelly?